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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

JOHNNIE WRAY GALVAN,

Defendant and Appellant.

F077371

(Super. Ct. No. F17902703)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. Michael G. Idiart, Judge.

John F. Schuck, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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* Before Franson, Acting P.J., Peña, J. and DeSantos, J.

INTRODUCTION

On January 30, 2018, appellant, Johnnie Wray Galvan, entered into a plea agreement. Galvan would plead no contest to allegations that he drove feloniously with a blood alcohol level of .08 percent, causing injury (Veh. Code, § 23153, subd. (b); count 1);¹ an enhancement for injuring more than one victim (§ 23558); feloniously drove or took a vehicle (§ 10851, subd. (a); count 3); and drove a vehicle with a suspended license, a misdemeanor (§ 14601.2, subd. (a); count 5). In exchange for Galvan's plea, the court would dismiss counts alleging that he drove under the influence of alcohol and caused bodily injury to another person (§ 23153, subd. (a); count 2) and feloniously received a stolen motor vehicle (Pen. Code, § 496d, subd. (a); count 4).

Galvan executed a felony advisement, waiver of rights, and plea form setting forth the counts he was admitting and expressly waiving his rights pursuant to *Boykin v. Alabama* (1969) 395 U.S. 238; *In re Tahl* (1969) 1 Cal.3d 122 (*Boykin/Tahl*) as set forth on the form. Galvan acknowledged on the form that he faced a maximum prison sentence of three years. At the change of plea hearing, the court and the parties agreed there would be a lid of three years on Galvan's sentence, his blood alcohol level readings were .18 and .19 percent, and there was more than one victim in the accident.

The court established that Galvan had read and understood his constitutional rights and had executed the waiver of rights form. The court read Galvan his *Boykin/Tahl* rights, which Galvan acknowledged and expressly waived in court. Galvan waived his right to a preliminary hearing. The court advised Galvan of the immigration consequences of his plea and told him that should he be under the influence of alcohol or drugs in the future he could be charged with murder if his intoxicated driving led to someone being killed. The parties stipulated to a factual basis for the plea.² Galvan

¹ Unless otherwise designated, all statutory references are to the Vehicle Code.

² According to the probation officer's report, which was based on the police report, on May 7, 2017, at approximately 9:00 p.m., a driver left his 1994 Honda Civic

admitted counts 1, 3, and 5. He admitted there was more than one injured victim as well as that his blood alcohol measurements were .18 and .19 percent.

The court denied probation, imposed a sentence of two years on count 1, a concurrent sentence of two years on count 3, and a sentence of one year for the section 23558 enhancement. Galvan's total sentence is three years. The court imposed a restitution fine of \$300, imposed other fines and fees, and granted actual custody credits of 107 days plus 106 days of local conduct credits for total custody credits of 213 days.

The trial court denied Galvan's request for a certificate of probable cause. Appellate counsel has filed a brief seeking independent review of the case by this court pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*).

APPELLATE COURT REVIEW

Galvan's appointed appellate counsel has filed an opening brief that summarizes the pertinent facts, raises no issues, and requests this court to review the record independently. (*Wende, supra*, 25 Cal.3d 436.) The opening brief also includes the declaration of appellate counsel indicating that appellant was advised he could file his own brief with this court. By letter on August 15, 2018, we invited Galvan to submit additional briefing. To date, he has not done so.

After independent review of the record, we have concluded there are no reasonably arguable legal or factual issues.

(valued at \$2,000) running with the keys in the ignition at an ARCO gas pump. After going inside to pay for gasoline, he found his car missing and reported the theft to law enforcement. Later that evening, another man, R., was driving northbound with two passengers when he saw Galvan driving southbound in the northbound lane. R. tried to avoid a collision with Galvan but collided with a third vehicle driven by a woman, S. S. and one of the passengers in R.'s car were transported to the hospital with injuries. An officer at the scene noted that Galvan appeared intoxicated and was emitting a strong odor of alcohol. Galvan said he was not driving, but the occupants of one of the other cars said he exited the driver's side of the Honda. Two breath samples showed Galvan's blood alcohol level at .18 and .19 percent.

DISPOSITION

The judgment is affirmed.